

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOBBY COLBERT,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 2:24-cv-01002-DGE

ORDER ADOPTING REPORT AND  
RECOMMENDATION

Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Theresa L. Fricke. (Dkt. No. 33.) Having reviewed the Report and Recommendation and the remaining record *de novo*, and considered Petitioner’s objections, the Court ADOPTS the R&R.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On July 29, 2024, Petitioner Bobby Darrell Colbert filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 2005 Skagit County convictions for rape in the second and third degree. (Dkt. No. 8.) Petitioner challenges his convictions based upon the

1 alleged failure of the Skagit County prosecutor to disclose an exculpatory DNA report until  
2 February 1, 2019. (Dkt. No. 8 at 5.)

3 On February 20, 2025, Judge Fricke issued an R&R recommending the Court dismiss the  
4 petition, or, in the alternative, transfer the case to the Ninth Circuit. (Dkt. No. 33.) Judge Fricke  
5 found the petition was second or successive, and noted the Court did not have jurisdiction to  
6 consider this petition until after Petitioner applied for, and received, authorization from the Ninth  
7 Circuit to file a second or successive petition. (*Id.* at 8–13.) Judge Fricke also found the petition  
8 should be dismissed as time barred. (*Id.* at 14–16.) On February 25, 2025, Petitioner filed  
9 objections to the R&R. (Dkt. No. 35.)

10 On March 12, 2025, Petitioner filed an application with the Ninth Circuit for permission  
11 to file a second or successive habeas corpus petition. (Dkt. No. 36.) On April 29, 2025, the  
12 Ninth Circuit denied Petitioner’s application. (Dkt. No. 37.)

## 13 II. LEGAL STANDARD

14 A district court reviews *de novo* “those portions of the report or specified proposed  
15 findings or recommendations to which [an] objection is made.” 28 U.S.C. § 636(b)(1)(C); *see*  
16 *also* Fed. R. Civ. P. 72(b)(3) (“The district judge must determine *de novo* any part of the  
17 magistrate judge’s disposition that has been properly objected to.”).

## 18 III. DISCUSSION

19 Petitioner’s objections do not address Judge’s Fricke’s reasoning concerning whether his  
20 petition is second or successive.<sup>1</sup> Pursuant to 28 U.S.C. § 2244(b)(3)(A), a “second or

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22 <sup>1</sup> Though not a model of clarity, Petitioner appears to argue that his Petition is not barred based  
23 on *Panetti v. Quarterman*, 551 U.S. 930, 947 (2007). (Dkt. No. 35 at 2.) *Panetti*, however,  
24 involved a claim of incompetency raised to prevent an execution; it is inapplicable to the present  
matter. *See* 551 at 947 (“The statutory bar on ‘second or successive’ applications does not apply  
to a *Ford* [(incompetency)] claim brought in an application filed when the claims is first ripe.”).

1 successive petition” may not be filed in the district court until the petitioner first obtains an order  
2 from the “appropriate court of appeals” that “authoriz[es] the district court to consider” the  
3 petition. *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (“If the petition is second or  
4 successive, then the district court lacks jurisdiction and must dismiss the petition unless and until  
5 the court of appeals grants an application to file it.”). Here, the Ninth Circuit has denied  
6 Petitioner’s application to file a second or successive petition and the Court lacks jurisdiction to  
7 consider the petition.

#### 8 IV. ORDER

9 The Court, having reviewed the Report and Recommendation, the petition for writ of  
10 federal habeas corpus relief, objections to the Report and Recommendation, and the remaining  
11 record *de novo*, does hereby find and ORDER:

- 12 1) The Court ADOPTS the Report and Recommendation (Dkt. No. 33);
- 13 2) Petitioner’s 28 U.S.C. § 2254 petition (Dkt. No. 8) is DISMISSED because the  
14 Court lacks jurisdiction.
- 15 3) Petitioner is DENIED issuance of a certificate of appealability.

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17 Dated this 4th day of June, 2025.



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20 David G. Estudillo  
21 United States District Judge  
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